



BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 55

[EPA-R03-OAR-2022-0776; FRL-10292-01-R3]

Outer Continental Shelf Air Regulations; Consistency Update for Maryland

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; consistency update.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to update a portion of the Outer Continental Shelf (OCS) Air Regulations. Requirements applying to OCS sources located within 25 miles of states' seaward boundaries must be updated periodically to remain consistent with the requirements of the corresponding onshore area (COA), as mandated by the Clean Air Act (CAA). The portion of the OCS air regulations that is being updated pertains to the requirements for OCS sources for which Maryland is the designated COA. The State of Maryland's requirements discussed in this document are proposed to be incorporated by reference into the Code of Federal Regulations (CFR) and listed in the appendix to the OCS air regulations.

DATES: Written comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R03-OAR-2022-0776 at www.regulations.gov, or via email to galarza-hernandez.arlin@epa.gov.

For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from

Regulations.gov. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the FOR FURTHER INFORMATION CONTACT section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit www.epa.gov/dockets/commenting-epa-dockets.

FOR FURTHER INFORMATION CONTACT: Gwendolyn Supplee, Permits Branch (3AD10), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, Four Penn Center, 1600 John F. Kennedy Boulevard, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814-2763. Ms. Supplee can also be reached via electronic mail at Supplee.Gwendolyn@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On September 4, 1992, EPA promulgated 40 CFR part 55,¹ which established requirements to control air pollution from OCS sources in order to attain and maintain

¹ The reader may refer to the notice of proposed rulemaking, December 5, 1991 (56 FR 63774), and the preamble to the final rule promulgated September 4, 1992 (57 FR 40792) for further background and information on the OCS regulations.

Federal and state ambient air quality standards and to comply with the provisions of part C of title I of the CAA. The regulations at 40 CFR part 55 apply to all OCS sources except those located in the Gulf of Mexico west of 87.5 degrees longitude. See 40 CFR 55.3(a). Section 328 of the CAA requires that for such sources located within 25 miles of a state's seaward boundary, the requirements shall be the same as would be applicable if the sources were located in the COA. Because the OCS requirements are based on onshore requirements, and onshore requirements may change, Section 328(a)(1) requires that EPA update the OCS requirements as necessary to maintain consistency with onshore requirements.

Pursuant to 40 CFR 55.12, consistency reviews will occur: (1) at least annually where an OCS activity is occurring within 25 miles of a State seaward boundary; (2) upon receipt of a Notice of Intent (NOI) under 40 CFR 55.4; or (3) when a state or local agency submits a rule to EPA to be considered for incorporation by reference in 40 CFR part 55. This proposed action is being taken in response to the submittal received by EPA on August 5, 2022, of a NOI, from US Wind, Inc., for the proposed installation of an up to 2-gigawatt offshore wind energy facility located approximately 10 nautical miles off the coast of Maryland. Public comments received in writing within 30 days of publication of this document will be considered by EPA before publishing a final rule.

Section 328(a) of the CAA requires that EPA establish requirements to control air pollution from OCS sources located within 25 miles of States' seaward boundaries that are the same as onshore requirements. To comply with this statutory mandate, EPA must incorporate applicable onshore rules into 40 CFR part 55 as they exist onshore. This limits EPA's flexibility in deciding which requirements will be incorporated into 40 CFR

part 55 and prevents EPA from making substantive changes to the requirements it incorporates. As a result, EPA may be incorporating rules into 40 CFR part 55 that do not conform to all of EPA's state implementation plan (SIP) guidance or certain requirements of the CAA. Consistency updates may result in the inclusion of state or local rules or regulations into 40 CFR part 55, even though the same rules may ultimately be disapproved for inclusion as part of the SIP. Inclusion in the OCS rule does not imply that a rule meets the requirements of the CAA for SIP approval, nor does it imply that the rule will be approved by EPA for inclusion in the SIP.

II. EPA Analysis

EPA reviewed Maryland's rules for inclusion in 40 CFR part 55 to ensure that they are rationally related to the attainment or maintenance of Federal or state ambient air quality standards and compliance with part C of title I of the CAA, that they are not designed expressly to prevent exploration and development of the OCS, and that they are potentially applicable to OCS sources. See 40 CFR 55.1. EPA has also evaluated the rules to ensure they are not arbitrary or capricious. See 40 CFR 55.12(e). In addition, EPA has excluded administrative or procedural rules, and requirements that regulate toxics which are not related to the attainment and maintenance of Federal and state ambient air quality standards.²

III. Proposed Action

EPA last did a consistency update for Maryland on August 16, 2019 (84 FR 34065). In that action, EPA incorporated by reference into 40 CFR part 55 all of

² Each COA which has been delegated the authority to implement and enforce 40 CFR part 55 will use its administrative and procedural rules as onshore. However, in those instances where EPA has not delegated authority to implement and enforce 40 CFR part 55, EPA will use its own administrative and procedural requirements to implement the substantive requirements. See 40 CFR 55.14(c)(4).

Maryland's regulations that EPA believed were relevant to the OCS requirements. For this action, EPA has reviewed changes that Maryland has made to its underlying regulatory programs. This action will have no effect on any provisions that were not subject to changes by Maryland and were also previously incorporated by reference into 40 CFR part 55 through EPA's August 16, 2019 rule. The rules that EPA proposes to incorporate are applicable provisions of the Code of Maryland Regulations (COMAR).

The intended effect of proposing approval of the OCS requirements for the Maryland Department of the Environment (MDE) is to regulate emissions from OCS sources in accordance with the requirements for onshore sources. The Maryland regulatory changes EPA proposes to incorporate are: (1) Chapter 8, Control of Incinerators – COMAR 26.11.08; (2) Chapter 17, Nonattainment Provisions for Major New Sources and Major Modifications General – COMAR 26.11.17; and (3) Chapter 20, Mobile Sources – COMAR 26.11.20. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

IV. Incorporation by Reference

In this proposed rule, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference the Code of Maryland Regulations air rules that are applicable to OCS sources and which are currently in effect. These regulations are described in Section III ("Proposed Action") of this preamble. EPA has made, and will continue to make, these materials available through www.regulations.gov and at the EPA Region III Office. Please contact the person

identified in the FOR FURTHER INFORMATION CONTACT section of this preamble for more information.

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to establish requirements to control air pollution from OCS sources located within 25 miles of states' seaward boundaries that are the same as onshore air pollution control requirements. To comply with this statutory mandate, the EPA must incorporate applicable onshore rules into 40 CFR part 55 as they exist onshore. See 42 U.S.C. 7627(a)(1); 40 CFR 55.12. Thus, in promulgating OCS consistency updates, EPA's role is to maintain consistency between OCS regulations and the regulations of onshore areas, provided that they meet the criteria of the CAA. Accordingly, this action simply updates the existing OCS requirements that have been revised since the last consistency review to make them consistent with requirements onshore, without the exercise of any policy direction by EPA. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

This proposed rulemaking incorporating by reference sections of COMAR does not apply on any Indian reservation land as defined in 18 U.S.C. 1151 or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, this rule incorporating by reference sections of COMAR does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

This action does not impose any new information collection burden under the PRA. Office of Management and Budget (OMB) has previously approved the information collection activities contained in the existing regulations at 40 CFR part 55 and, by extension, this update to part 55, and has assigned OMB control number 2060-0249. This action does not impose a new information burden under PRA because this action only updates the state rules that are incorporated by reference into 40 CFR part 55, appendix A³.

EPA is proposing to incorporate the rules potentially applicable to sources for which the State of Maryland will be the COA that have been revised since the last consistency review. The rules that EPA proposes to incorporate are applicable provisions of the Code of Maryland Regulations.

List of Subjects in 40 CFR Part 55

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Outer continental shelf, Ozone, Particulate matter, Permits, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Adam Ortiz,

*Regional Administrator,
Region III.*

³ OMB's approval of the Information Collection Request (ICR) can be viewed at www.reginfo.gov.

For the reasons set out in the preamble, title 40 of the Code of Federal Regulations, part 55, is proposed to be amended as follows.

PART 55—OUTER CONTINENTAL SHELF AIR REGULATIONS

1. The authority citation for part 55 continues to read as follows:

Authority: Section 328 of the Clean Air Act (42 U.S.C. 7401 *et seq.*) as amended by Pub. L. 101-549.

2. Section 55.14 is amended by revising paragraph (e)(10)(i)(A) to read as follows:

§ 55.14 Requirements that apply to OCS sources located within 25 miles of States' seaward boundaries, by State.

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(e) * * *

(10) * * *

(i) * * *

(A) State of Maryland Requirements Applicable to OCS Sources, July 28, 2022.

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3. Appendix A to 40 CFR part 55 is amended by revising paragraph (a)(1) under the heading “Maryland” to read as follows:

Appendix A to Part 55—Listing of State and Local Requirements Incorporated by Reference into Part 55, by State

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Maryland:

(a) State requirements.

(1) The following State of Maryland requirements are applicable to OCS Sources,
July 28, 2022, State of Maryland – Department of the Environment.

The following sections of Code of Maryland Regulations (COMAR) Title 26 Subtitle 11:

COMAR 26.11.01 - General Administrative Provisions (Effective as of December 6, 2018)

COMAR 26.11.02 - Permits, Approvals, and Registrations (Effective as of February 12, 2018)

COMAR 26.11.03 - Permits, Approvals, and Registration- Title V Permits (Effective as of November 12, 2010)

COMAR 26.11.05 - Air Pollution Episode System (Effective as of November 12, 2010)

COMAR 26.11.06 - General Emission Standards, Prohibitions, and Restrictions (Effective as of July 02, 2013)

COMAR 26.11.07 - Open Fires (Effective as of November 12, 2010)

COMAR 26.11.08 - Control of Incinerators (Effective as of May 4, 2020)

COMAR 26.11.09 - Control of Fuel-Burning Equipment, Stationary Internal Combustion Engines and Certain Fuel-Burning Installations (Effective as of December 6, 2018)

COMAR 26.11.13 - Control of Gasoline and Volatile Organic Compound Storage and Handling (Effective as of July 21, 2014)

COMAR 26.11.15 - Toxic Air Pollutants (Effective as of November 12, 2010)

COMAR 26.11.16 - Procedures Related to Requirements for Toxic Air Pollutants (Effective as of November 12, 2010)

COMAR 26.11.17 - Nonattainment Provisions for Major New Sources and Major Modifications (Effective as of December 30, 2019)

COMAR 26.11.19 - Volatile Organic Compounds from Specific Processes (Effective as of September 28, 2015)

COMAR 26.11.20 - Mobile Sources (Effective as of February 7, 2022)

COMAR 26.11.26 - Conformity (Effective as of November 12, 2010)

COMAR 26.11.35 - Volatile Organic Compounds from Adhesives and Sealants
(Effective as of November 12, 2010)

COMAR 26.11.36 - Distributed Generation (Effective as of February 12, 2018)

COMAR 26.11.39 - Architectural and Industrial Maintenance (AIM) Coatings (Effective
as of April 2016)

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